**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Review of Ohio Adm.Code 4901-9 Rules Regarding Commission Complaint Proceedings. | )  )  ) | Case No. 18-278-AU-ORD |

**COMMENTS ON THE PUBLIC’S RIGHT TO FILE A COMPLAINT AGAINST A PUBLIC UTILITY**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**AND**

**THE NORTHWEST OHIO AGGREGATION COALITION**

Bruce Weston (#0016973)

Ohio Consumers’ Counsel

Amy Botschner O’Brien (0074423)

Counsel of Record

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, 7th Floor

Columbus, Ohio 43215-4213

Telephone [Botschner O’Brien]:

(614) 466-9575

[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)

(Willing to accept service by e-mail)

Thomas R. Hays,

Counsel for Lucas County (0054062)

8355 Island Lane

Maineville, OH 45039

419-410-7069

[trhayslaw@gmail.com](mailto:trhayslaw@gmail.com)

(Willing to accept service by e-mail)

*Attorney for The Northwest Ohio*

January 13, 2020 *Aggregation Coalition*

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Review of Ohio Adm.Code 4901-9 Rules Regarding Commission Complaint Proceedings. | )  )  ) | Case No. 18-278-AU-ORD |

**COMMENTS ON THE PUBLIC’S RIGHT TO FILE A COMPLAINT AGAINST A PUBLIC UTILITY**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**AND**

**THE NORTHWEST OHIO AGGREGATION COALITION**

The Public Utilities Commission of Ohio (“PUCO”) seeks comments on its proposed amendments to Ohio Adm.Code 4901-9 regarding complaint proceedings, including the PUCO’s new proposed rule that it can declare a person or party a vexatious litigator.[[1]](#footnote-3) The Office of the Ohio Consumers’ Counsel (“OCC”) and the Northwest Ohio Aggregation Coalition (“NOAC”) submit these comments. This opportunity to comment is appreciated.

1. **OHIO LAW GRANTS ANY PERSON, FIRM, OR CORPORATION THE RIGHT TO FILE A COMPLAINT AGAINST A PUBLIC UTILITY.**

The statutory right of any person, firm, or corporation to file a complaint under R.C. 4905.26 or 4927.21 cannot by rule be denied, such as by declaring one a vexatious litigator. Additionally, R.C. 2323.52 expressly provides that the authority to declare a vexatious litigator belongs to Ohio’s civil courts. Moreover, the PUCO has procedural mechanisms

available to administer its proceedings, such as rules for protective orders, prehearings, and administration of its hearings.[[2]](#footnote-4)

**II.** **THE PUCO’S EXISTING RULE, OHIO ADM.CODE 4901-9-01(B), SHOULD BE MODIFIED TO PROVIDE FOR THE PUBLIC, ON THE PUCO’S WEBSITE, AN EXPLANATION OF THE PUCO’S FORMAL COMPLAINT PROCESS AND A LINK TO THE CONSUMER COMPLAINT FORM.**

The Columbus Dispatch and the Cleveland Plain Dealer published an article describing the challenges that Ohioans encounter in processing complaints against powerful (lawyered-up) utilities.[[3]](#footnote-5) The Plain Dealer’s headline was “Prepare to lose your case at PUCO: Consumers only win 4 cases over 10 years.”[[4]](#footnote-6)

Ohio Adm.Code 4901-9-01(B) describes the minimum information that must be included in a consumer’s formal complaint, and it describes how a consumer may request a sample complaint form from the PUCO service monitoring and enforcement department. But the rule should be improved to provide important information to the public – information that may help avoid vexatious litigation while helping consumers with their formidable challenge in suing a utility company to further their rights.

Unfortunately, the rules do not require that an explanation of the formal complaint process be provided on the PUCO’s website for consumer reference. Nor do the rules require the PUCO’s website to provide a link for customers to obtain the sample complaint form. Providing this information on the PUCO’s website would be helpful (or necessary) for consumers in their decision whether to file a formal complaint. Better information could also help avoid problems, such as what is being considered by the PUCO as vexatious.

To help inform consumers about the PUCO’s complaint process, Ohio Adm.Code 4901-9-01(B) should be amended as follows:

(B) All complaints filed under section 4905.26 and section 4927.21 of the Revised Code, except complaints filed by a public utility concerning a matter affecting its own product or service, shall be in writing and shall contain the name of the public utility complained against, a statement which clearly explains the facts which constitute the basis of the complaint, and a statement of the relief sought. An explanation of the formal complaint process and ~~S~~sample complaint forms may be obtained on the PUCO’s website or by contacting the commission's service monitoring and enforcement department. If discrimination is alleged, the facts that allegedly constitute discrimination must be stated with particularity. Upon receipt of such a complaint, the docketing division shall serve a copy of the complaint upon the public utility complained against, together with instructions to file an answer with the commission in accordance with the provisions of this rule. The public utility complained against shall file its answer with the commission within twenty days after the mailing of the complaint, or such period of time as directed by the commission, the legal director, the deputy legal director, or an ~~attorney Examiner~~ ALJ, and shall serve a copy upon all parties in accordance with rule 4901-1-05 of the Administrative Code. An answer must be filed in accordance with this paragraph, whether or not the public utility files a motion to dismiss the complaint or any other motion in response to the complaint.

# III. CONCLUSION

The PUCO already has mechanisms to administer its proceedings, without a rule to prevent consumer complaints that utilities or others would complain are “vexatious.” Further, there is no statutory authority for declaring a vexatious litigator in consumer complaints at the PUCO. Moreover, it has not been shown that vexatious litigation at the

PUCO is a problem warranting an attempt at elimination or limitation of consumers’ rights to file a complaint.

Accordingly, the PUCO should focus on other mechanisms for administering its proceedings and helping consumers. It should not adopt the proposed rule in Ohio Adm.Code 4901-9 to declare that a complainant is a vexatious litigator. And the PUCO should focus on educating and assisting regular Ohioans who need all the help they can get when they need to file consumer protection complaints against powerful, lawyered-up utility monopolies at the PUCO.

Respectfully submitted,

Bruce Weston (#0016973)

Ohio Consumers’ Counsel

*/s/ Amy Botschner O’Brien*

Amy Botschner O’Brien (0074423)

Counsel of Record

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, 7th Floor

Columbus, Ohio 43215-4213

Telephone [Botschner O’Brien]:

(614) 466-9575

[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)

(Willing to accept service by e-mail)

*/s/ Thomas R. Hays*

Thomas R. Hays,

Counsel for Lucas County (0054062)

8355 Island Lane

Maineville, OH 45039

419-410-7069

[trhayslaw@gmail.com](mailto:trhayslaw@gmail.com)

(Willing to accept service by e-mail)

*Attorney for The Northwest Ohio*

*Aggregation Coalition*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments were served on the persons stated below via electronic transmission, this 13th day of January 2020.

*/s/Amy Botschner O’Brien*

Amy Botschner O’Brien

Assistant Consumers’ Counsel

**SERVICE LIST**

[John.jones@ohioattorneygeneral.gov](mailto:John.jones@ohioattorneygeneral.gov)

Attorney Examiner:

[Patricia.schabo@puco.ohio.gov](mailto:Patricia.schabo@puco.ohio.gov)

1. *In re the Matter of the Review of Ohio Adm. Code Chapter 4901-9 Regarding Commission Complaint Proceedings*, Case No. 18-0278-AU-ORD, Entry at 74-76 (Dec. 4, 2019). [↑](#footnote-ref-3)
2. See e.g. Ohio Adm.Code 4901-1-24, 4901-1-26, and 4901-1-27. [↑](#footnote-ref-4)
3. Gearino, *Ohio consumers face difficulties filing complaints against utilities*, Columbus Dispatch (May 10, 2015) <https://www.dispatch.com/article/20150510/NEWS/305109934>, (“If you are an Ohio consumer filing a complaint against a utility company, get ready for a long battle, and be prepared to lose.”). [↑](#footnote-ref-5)
4. Gearino, *Prepare to lose your case at PUCO*, Cleveland Plain Dealer (May 11, 2015), page A1. [↑](#footnote-ref-6)